

### **REMARKS**

This amendment is responsive to the Office Action of January 25, 2007. Reconsideration and allowance of claims 1-10 are requested.

### **The Office Action**

Claim 1 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 2, and 8 of commonly owned and copending Application No. 2006/0158734 by Schuurmans et al.

Claims 2-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of Schuurmans (2006/0158734).

### **Abstract**

In response to the Examiner's comments, Applicant has inserted an Abstract, as shown on page 2 of this paper.

### **Specification**

In response to the Examiner's comments, Applicant has amended the specification to include headings.

### **Statutory Double Patenting Under 35 U.S.C. 101**

The current application and Schuurmans (2006/0158734) are commonly owned and share the same priority date, December 19, 2002, based on European Patent Application EP 020804274. However, the current application is a National Stage Entry of PCT/IB03/05467 filed November 21, 2003, while Schuurmans is a National Stage Entry of PCT/IB03/06089 filed December 19, 2003.

Claim 1 of the present application is not the same as claims 1, 2, and 8 for Schuurmans. Claim 1, line 4 of Schuurmans calls for a "multivariate optical element for reflecting..." By contrast, claim 1 of the present application calls for "a dispersive element... for distributing..." Claim 1 of the present application does not call for a multivariate optical element, nor does claim 1 of the present application set forth the limitation "for reflecting". Due to these and other differences, claim 1 of the present

application does not claim the "same invention" in the sense of 35 U.S.C. § 101 as the combination of claims 1, 2, and 8 of Schruurmans.

The claims of the two applications may, in some respects, be viewed as generic and a specific to one embodiment. But, they are not the same.

In light of the above, Applicant respectfully requests removal of the statutory double patenting rejection of claim 1 under 35 U.S.C. § 101.

#### **Non-Statutory Double Patenting**

In order to obviate the non-statutory double patenting rejections of claims 2-10, Applicant has attached a terminal disclaimer per 37 CFR 1.321(b). Accordingly, Applicant respectfully requests removal of this rejection.

#### **CONCLUSION**

For the reasons set forth above, it is submitted that claims 1-10 (all claims) distinguish patentably over the references of record and meet all statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he is requested to telephone Thomas Kocovsky at (216) 861-5582.

Respectfully submitted,

FAY SHARPE LLP

A large, stylized handwritten signature in black ink, likely belonging to Thomas E. Kocovsky, Jr., is written over the printed name and address.

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